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U.S. Tax Court: Requirement for IRS supervisory approval before penalty assessments

The U.S. Tax Court today issued two opinions that concern a requirement under section 6751(b)(1) for IRS supervisory approval before penalty assessments.

- In the first case, a “reviewed opinion,” the IRS sent a Letter 1807 inviting the taxpayer to closing conferences to discuss the tentative proposed adjustments including a disallowed charitable contribution deduction related to a conservation easement and alternative penalties. The conferences were held, but no agreement was reached. The IRS agent finalized a penalty approval form for three alternative penalties that was then signed by a supervisor. The IRS next issued a 60-day letter asserting the three penalties, which the taxpayer unsuccessfully appealed. The IRS then issued a final partnership administrative adjustment (FPAA) asserting the same three penalties and a fourth penalty that did not have supervisory approval.

On the taxpayer’s challenge of the penalty procedures, the Tax Court held that the issuance of the Letter 1807 setting forth the tentative proposed adjustments and inviting the taxpayer to a conference to discuss them, did not constitute the initial determination of a penalty assessment thereby requiring prior supervisory approval under section 6751(b)(1). The Tax Court majority found that the IRS had satisfied the requirements of section 6751(b)(1) for the first three penalties because the IRS agent had secured written supervisory approval on the civil penalty approval form before the 60-day letter was issued to the taxpayer, thereby formally communicating to the taxpayer the IRS Examination Division’s definite determination to assert those penalties. The case is: *Belair Woods, LLC v. Commissioner*, 154 T.C. No. 1 (January 6, 2020). Read the [Tax Court’s opinion](#) [PDF 135 KB] that includes concurring and dissenting opinions

- In the second case, the IRS provided documents to the taxpayers proposing, but not determining, penalties. Penalties were determined in a notice of deficiency and an FPAA. The taxpayers asserted that a penalty determination under section 6751(b)(1) requires supervisory approval before the penalties are first proposed. The Tax Court held that section 6751(b)(1) does not require written supervisory approval of penalties until the first formal communication to the taxpayer that the IRS has determined a penalty and that, in this case, the first formal communications in which the IRS communicated the determination of penalties were the notice of deficiency and the FPAA.

The case is: *Tribune Media Co. v. Commissioner*, T.C. Memo 2020-2 (January 6, 2020). Read the [Tax Court's opinion](#) [PDF 105 KB]

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